



Birkbeck ePrints: an open access repository of the research output of Birkbeck College

<http://eprints.bbk.ac.uk>

Fitzpatrick, Peter (2005). 'The damned word': culture and its (in)compatibility with law. *Law, Culture & the Humanities* 1 (1), 2-13.

This is an author-produced version of a paper published in *Law, Culture & the Humanities* (ISSN 1743-8721). This version has been peer-reviewed but does not include the final publisher proof corrections, published layout or pagination.

All articles available through Birkbeck ePrints are protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law. The final, definitive version of this article has been published in the Journal *Law, Culture & the Humanities* 1 (1), 2005, © Association for the Study of Law, Culture, and the Humanities, 2005 by SAGE Publications Ltd at the *Law, Culture & the Humanities* page: <http://lch.sagepub.com> on SAGE Journals Online: <http://online.sagepub.com/Law, Culture & the Humanities> is a publication of the Association for the Study of Law, Culture and the Humanities (The College of Liberal Arts, University of Texas at Austin). It is co-sponsored by the Socio-Legal Research Centre at Griffith University (Australia) and Amherst College (USA).

Citation for this version:

Fitzpatrick, Peter (2005). 'The damned word': culture and its (in)compatibility with law. *London: Birkbeck ePrints*. Available at: <http://eprints.bbk.ac.uk/archive/00000494>

Citation for the publisher's version:

Fitzpatrick, Peter (2005). 'The damned word': culture and its (in)compatibility with law. *Law, Culture & the Humanities* 1 (1), 2-13.

<http://eprints.bbk.ac.uk>

Contact Birkbeck ePrints at lib-eprints@bbk.ac.uk

“The damned word:” Culture and Its (In)compatibility with Law

Peter Fitzpatrick
Anniversary Professor of Law
School of Law
Birkbeck
Malet Street
London WC1E 7HX
Tel: (0)20 7323 4986/(0)1227 710554
Fax: (0)20 7631 6506
Email: peter.fitzpatrick@clickvision.co.uk

“The damned word:” Culture and Its (In)compatibility with Law

ABSTRACT

The compatibility and incompatibility between law and culture are identified through an analysis of relation. By way of exploring the elusiveness of conceptions of culture and of law, a commonality relating them is arrived at, one that indicates not only what they constitutently share but also what distinguishes them from each other. So far an abstract abstract. The abstractness of the comment itself is relieved by references to a case study and by resorting to etymologies.

The damned word:” Culture and Its (In)compatibility with Law

Why should it still be a question? Why should it still be pertinent to ask impertinently “what does culture have to do with it?” (I will presume “it” to be the relation between law and culture)? Now that there is an abundant observation of compatibility between law and culture, and of each manifesting itself in the other, surely we could expect to come upon a well-settled scene. Yet, as the edgy quality of the question might suggest, the relation of law to culture remains “disputed” and “uneasy.”¹ What is more, no matter how often culture is shown to inhabit law, this is still some kind of revelation. Culture has now joined society, class, gender, and the state of the judge’s digestion as things on which law is thoroughly reliant, and it is this reliance which is continually revealed, and revealed in a way which confronts law’s pretence to be otherwise. The sustaining of that pretence is some testament to law’s insistent autonomy, as is the fact that culture has of late joined society, and various other things, not only as making or shaping law but also as being made or shaped by it. This mantric alternation leaves law and culture in a relational soup in which neither need assume distinctness. Law, in sum, is dependent on culture (or society and so on), yet it exists autonomously and affects culture (or society and so on). This is one conundrum that the present comment attempts to resolve.

With an apt perversity, resolution will proceed by way of irresolution. The other, and unavoidable, conundrum involved in dealing with the ever unsettled relation between law and culture is the spectacular intractability of the things to be related. What law and culture do share is a notorious resistance to the metaphysics of presence, to being rendered in terms of some generally accepted content. Staying for now with culture and with the brief to “interrogate” it, what is remarkable is that under interrogation culture never breaks down. It can never be reductively rendered but always retains its existential secret. So, to take a notorious example, even with Kroeber and Kluckhohn’s 164 anthropological definitions, ‘culture’ somehow still manages to escape.² Which goes to account for some of the exasperation of Raymond Williams when declaiming of culture that “I don’t know how many times I’ve wished that I’d never heard the damned word.”³ Williams could, however, be taken at his word in the derivation of ‘damned’ from *damnum* as loss. Culture is damned in that the possibility in its being, the infinite incipience of its existent contents, is always lost in any instantiation of it. That loss is intensified in the necessity of instantiation, in the inability of culture to be rendered fully. And although that is a loss attending any signification, culture seems to be a concept enabling some experiential, even cognitive hold on the loss itself, a concept conveying some surpassing of the inexorability of presence. What Bagehot says of nation can perhaps be said of

culture also: “We know what it is when you do not ask us, but we cannot very quickly explain or define it.”⁴

To begin to get a hold on this hold that culture seems to have, a case study may help. From it I will derive two dimensions of culture, dimensions that would seem to mark a pervasive and persistent divide found in accounts of culture. I will then elaborate on those dimensions and on how they are brought together in the constituting of culture. The case study chosen is Gerd Baumann’s intense observation of the diversity of cultures and his “contesting culture”, the idea of culture, in “multi-ethnic London.”⁵ When dealing with “the dominant discourse” and its penetrative efficacy, Baumann finds that “culture” imports contained presence as “cultural differences,” as something “reified,” as a surrogate racial ascription.⁶ Yet when looking at the diversity of cultures in play, Baumann joins a great many others in finding the reified notion of culture quite wanting. Culture, rather, is something “dynamic,” a “continual process,” uncontainable and resistant to reification.⁷ Yet there is nothing in that perception of culture as mere movement that would leave it with any determinate existence at all. Baumann does, however, advance matters beyond this common and inherently incomplete line of criticism. He observes that the confining categories in which culture is reified are categories actually accepted and generated by the very people to whom they are applied; but these categories are not solely those of a dominant culture. Rather, he finds that these same people juggle many different cultures and

consciously “reify culture at the same time as making, re-making, and thus changing it.”⁸ Culture is here being recognised simultaneously, “at the same time,” as some-thing and as other than that thing. These dimensions of culture running through a welter of its meanings will now be briefly considered, starting with the reified variety.

Derrida’s remarking on “a coloniality of culture” has an appropriate touch of the tautology to it.⁹ ‘Culture’ denotes the cultivated, and thence demarcated field, and “colonial” is derived from *colere*, to till. Culture in this demarcating dimension enables a group or an institution to endow meaning on a self-appropriative existence, thus enabling it, in Kuper’s terms, to be “marked off from all others.”¹⁰ A stark example would be, borrowing Stolcke’s designation, the cultural fundamentalism espoused by elements of the political right in Europe.¹¹ With such fundamentalism, people are perceived as constituted essentially by their distinct culture. That culture, in turn, is perceived as geographically confined, and the various cultures involved are taken to be incommensurable and conflicting. Gilroy accurately sees this as a neo-racism,¹² but the assertion of self-containment and the sharpness of division characterising European cultural fundamentalism can be found also in manifestations of culture of a more progressive pedigree, such as multiculturalism and cultural relativism.

This type of positioning in relation to culture is, I now hope to show, unrealizable but, as I also hope to show soon after, that failure of realization does

reveal constituents of cultural being. Taking cultural fundamentalism as the exemplar, to be coherent in its own perspective, the nostrums of cultural fundamentalism can only be of a culture. Being bounded by our distinct culture, we cannot know that we know or do not know other cultures, and hence we cannot know that other cultures and our own are utterly distinct, incommensurable, and inevitably conflicting. Bluntly, the very claim to separation not only fails to counter the possibility of relation but in itself evokes that possibility.

And, indeed, neither cultural fundamentalism nor those other claims to cultural separation would deny that the cultures concerned are somehow *in* a relation. This very recognition of some relation, however, poses insuperable difficulties for the distinctness of such a culture – the distinctness maintained in the relation. If each culture is going to claim distinctness as completeness yet be with other cultures, if it is going to assume an element of commonality necessary for relation yet still be so distinct, each culture in the relation would then have to be the same as the other. There is simply no other way, no other condition short of sameness, through which they can relate. Distinctness would thence be lost. Alternatively, if this distinctness of each is to be preserved, there would be as many different claims on what is in common as there are distinctly different cultures in relation. This would be the utter dissipation of commonality. Hence my key point: the seemingly paradoxical price of the distinctness of a culture in

its relation to other cultures is some being-in-common inhabiting and limiting each culture 'in' its very distinctness. I will return shortly to the point and relate it to the constitution of cultural being.

Before that, and not least because the exercise may confirm this key point, there should be some consideration of those significant variations on cultures as distinct that would nonetheless see them as integrally related. Cultures are found to so relate "in contexts of hybridity, creolisation, intermixture."¹³ Or, cultures are "overlapping, interactive...;" they are "densely interdependent in their formation and identity."¹⁴ Or, specifically, multiculturalism is saved from mere difference through "relationality" between cultures.¹⁵ Yet, important as these constituent claims for cultures in relation have been, they all fail through their inability to mark any such culture as distinct, to save it from being lost in the relation, or to show that some *tertium quid* does not utterly subordinate the cultures in relation. Indeed, a *tertium quid* is posited at least as the position from which claims to distinctness and relation have to be made for, borrowing from Davidson, to say that cultures are distinct yet *in* relation would "make sense...only if there is a common coordinate system on which to plot them; yet the existence of a common system belies the claim to dramatic incomparability."¹⁶ Thus we arrive at a conclusion bolstering that just reached when considering claims to such "dramatic incomparability," the conclusion which arrived at a being-in-common as a condition of the (element of) incomparability. In all, and in terms of the first

dimension derived from Baumann's case, culture resists reification; it fails to be simply some distinct thing.

Before moving on to derive an idea of cultural being from this productive failure, and as a necessary prelude to so doing, some account has to be taken of the other dimension of culture derived from Baumann's case. If culture cannot be some distinct thing, neither can it, in terms of the second dimension, exist simply as other than that thing. Admittedly, culture can manifest an exuberant ability to extend in a receptive and protean way beyond itself, beyond what it may at any one time be. This ability is reflected in such characteristic descriptions of culture as "open, syncretic, and unstable."¹⁷ Something of that quality is captured also in the frequent rendering of culture as process: "Culture in all its early uses was a noun of process," says Williams.¹⁸ That this processual, open dimension of culture cannot be existentially contained is evident from the failure of efforts to encompass it in a totality of 'culture' as some abstract or universal entity. These efforts are usually located in the Enlightenment departure from the "early uses" noted by Williams, and the most potent of these departures has involved the transformation of 'culture' into 'civilization.'¹⁹ The idea of civilization soon comes to reinforce its arrogation of the cultural universal by fusing with the belief that culture distinguishes human life – culture as an ability to work on and against nature, including our savage human nature.²⁰ Much more recently, the

uncontainable 'in' culture is putatively emplaced in quasi-universal notions of world culture and of global culture.²¹

But where may we stand apart from universal civilization, the human, the global, the world, life, so as to get a perspective on any of these? Two types of quasi-constituent claim are advanced in answer, one positive and one negative. The positive takes the form of the exemplar in which positioned particularity enshrines the universal, most commonly a singular people asserting a prerogative hold on civilization. Since it affects only those subscribing to it as a transcendent belief, the hold of exemplarity cannot be universal short of its comprehensive acceptance. The negative claim could be seen as something of an elaboration on culture's "always [being] defined in opposition to something else."²² The civilized, staying with the example of civilization, constitutently opposes the savage. With this expedient, the supposed universal can never be such since it lacks universal reach in its dependence on what is ever beyond it. Yet, as universal, it must professedly seek to include that which it opposes, as in varieties of social evolution. But the constituent opposition can never be finally eliminated because the claim to the universal depends essentially on it.²³ However, that very ability of a culture to embed the universal for its adherents is testament to this 'universal' being more than mere failure. What that 'more' entails is a culture's universal orientation, its extending incipiently and uncontainedly beyond any existent particular.

It is time to draw in this engagement with constituent dimensions of culture and to derive from it what culture ‘is’ before proceeding to indicate “what culture has to do with it,” to do with the relation between law and culture. This drawing-in will for now focus on and extend the key point emphasised when considering cultures in relation, the point being that the very distinctness *in* the relation of such cultures depended on some being-in-common inhabiting and limiting each. Although the point was derived from cultures relating to each other, it would emerge by way of the same analysis from any relation that is an interrelation, a mutual being-with. What I hope to show now is that culture, as well as a culture, is itself such a being-in-common and to show this not just as a dry analytical matter but as avidly existent.

Which is where this anfractuous adventure began, and it is in this beginning that it has remained. People in London’s Southall who provided Baumann’s case “reify culture at the same time as making, remaking, and thus changing it.”²⁴ Culture and a culture combine being reified, being rendered determinate, and being responsively and illimitably other to that determinate existence. These dimensions of culture are, in turn, constituents of interrelation and its condign being-in-common. That being-in-common has to be capable of determinate effects if, in terms of my key point, it is to limit the relating entities ‘in’ their very distinctness. As determinate and thence partial or incomplete, it must ever relate responsively beyond what is its determinate existence at any one

time. Put another way, the dimension of responsiveness could only be, as it were, displaced in a totality absorbing all (of what would otherwise be) alterity, and thence denying the possibility of, and the possibility in, relation. And the two dimensions are integral to each other. Short of the determinate, in turn, being an all-absorbing totality, the dimension of the determinate cannot enduringly exist without its relating-beyond. And this relating-beyond cannot come into existence, cannot be a bringing into existence, without the receptively determinate.

Culture is the combination and the combining of these dimensions in a way that generates shared meaning. It is, again drawing on Baumann, an “ever-changing ‘complex whole’...through which people engage in the continual process of accounting, in a mutually meaningful manner, for what they do, say, and might think.”²⁵ Something of this quality of culture, the quality of extending ever beyond in the finding of meaning and thence bringing it back to an existent place, could be summarily accentuated in the frequent evocation of culture as being of, or somehow matching, the sacred or the religious.²⁶ The etymology remains accommodating: *colere* is not just to till but also to worship.

With that obliging etymology as a springboard, my focus will shift to what was taken to be the exordial “it” in the question “What does culture have to do with it?” – shift in other words to the relation between law and culture. “Relation” in this initial formulation now loses its blandness and becomes pointedly challenging. If the key point about distinctness *in* relation is to hold here, then

there has to be a shared being-in-common as between law and culture, and that being-in-common has to foment the distinctness of each in the relation.

Back to etymology, now in the company of Vissman:

The primordial scene of the *nomos* opens with a drawing of a line in the soil. This very act initiates a specific concept of law, which derives order from the notion of space. The plough draws lines – furrows in the field – to mark the space of one’s own. As such, as ownership, the demarcating plough touches the juridical sphere. ...The primordial act as described here brings together land and law, cultivation and order, space and *nomos*.²⁷

Or with Young: this “is the original meaning of *nomos*, that portion of food-bearing land (we still call it ‘keep’) through which my sheep may safely graze.”²⁸ And the ever-obliging *colere* would also mean to care for and to protect. All of that may sit comfortably with standard notions of law as containedly determinate, but there is more to it. Young would add:

With a supremely judicious sense of metaphor, the Greeks also used ‘*nomos*’ to designate song or melody, that portion of structured time through which my emotions (and perhaps my

dancing body) may safely range in search of nourishment without fear of being ecstatically carried away.²⁹

Yet even that ranging beyond is too restrained, and restraining, for law. With Foucault now, we could ask:

How could one know the law and truly experience it, how could one force it to come into view, to exercise its powers clearly, to speak, without provoking it, without pursuing it into its recesses, without resolutely going ever farther into the outside into which it is always receding?³⁰

And with Blanchot we may:

...grant that the law is obsessed with exteriority, by that which beleaguers it and from which it separates via the very separation that institutes it as form, in the very movement by which it formulates this exteriority as law.³¹

Matching these extravagant claims now with the dimensions already identified in culture, it could be said that law 'is' the settlement in terms of a

normative continuity of the existential divide between a determinate positioning and a responding to what is beyond position, and it is in the necessity yet impossibility of such settlement that law is iteratively impelled into existence. In their separation yet inexorable combining, these two dimensions form the horizon of law, a moving horizon – the horizon both as a condition and quality of law's contained existence, and the horizon as opening onto all that lies beyond this existence. Law's position within that horizon cannot be at all irenically set. The assertion of determinate position has always to be made in relation to the infinitely responsive. To give emphasis to this responsive dimension of law is to go against the epochal elevation of occidental law's determinate dimension over the responsive. Yet this emphasis is hardly to deny that, if law continually becomes itself and is sustained in its responsiveness to exteriority, there must nonetheless be a positioned place where this responsiveness can be made determinate. That which is purely beyond is merely inaccessible, and out of responsive range. Law always returns to determinate position, and to sustain position there must be some shielding from an importunate responsiveness. There has, with any law, to be a constant, reductive effort to ensure that "the aleatory margin...remains homogeneous with calculation, within the order of the calculable."³² Yet, further, law has also to exceed all fixity of determination. It remains pervaded by the relation to what is beyond, labile and protean to an illimitable extent. This impossibility of invariant positioning is what makes law

possible. Even at its most settled, or especially at its most settled, law could not ‘be’ otherwise than in a responsiveness to what was beyond its determinate content ‘for the time being’. If that content could be perfectly stilled, there could be no call for decision, for determination, for law. And it is in the very response to this call, in the making and sustaining of its distinct content, that law ‘finds itself’ integrally tied to, and incipiently encompassing of, its exteriority.

It is in their combining of these dimensions that law and culture each enables, and gives experiential purchase on, being-in-common. In so doing, law and culture join a set of elusive entities which even, or especially, in modernity assume the sacral capacity of bringing an illimitable reach into some determinate rendering. And from the ‘profane’ perspective of that rendering, these entities assume a self-subsistent, if necessarily imprecise, presence along with an incorporative extension beyond that presence – such as, to take almost random instances, the denizens of Schmitt’s “political theology,” or of Lefort’s “ideology,” or Derrida’s accounting for sovereignty as “a secularized theological concept.”³³ There is, there has to be, a quotidian quality, an ordinariness to these extraordinary entities. The residents of Southall can readily inhabit and use the entity Baumann studied, culture. And it is manifest and it is commonplace, in processes of legal decision-making and in the claims which law’s adherents make on one another, that law is determinately graspable and yet responsively receptive to changing social conditions and such.

So much for the compound being-in-common inhabiting law and culture, but if the key point is to survive this instance of it, the being-in-common must not only inhabit but also limit each entity and somehow do so 'in' its very distinctness. As between law and culture, that limit subsists in the different terms in which each combines the two dimensions. With culture they combine in a way that is necessarily unresolved, with law necessarily resolved.

Returning one further time to Baumann's Southall, as we have seen, its people can treat culture simultaneously as reified and as in the process of being other to its reification. For them to be able to do this, there has to be a constituent irresolution with-in culture as between these two dimensions of it, as between what has been called here the determinate and the responsive. If it were otherwise, if there were an enduring resolution as between the two dimensions, either the responsive would be contained in the determinate or the determinate would be lost in the responsive. True, academies and canonical fiats do attempt some prescriptive resolution, but this can only ever have tangential influence on the life of culture. To assert a culture as comprehensively determinate, and where the assertion is not simply descriptive, is invariably to assert some entitlement or right as a culture, and that would be "to present ourselves as bounded beings – distinct, recognizable, delineated, subjects before the law."³⁴

And as for the resolving law, if the account of it offered a short while ago is accepted, then it could be said that law entails the illimitable yet determinative

bringing of what is beyond into the normatively determinate. So as to be intrinsically resolving and yet embody such an insistent receptivity, law is intrinsically unattached to any pre-existent. Thence law “affirms itself as law and without reference to anything higher: to it alone, pure transcendence.”³⁵ Law, then, has to stand “absolute and detached from any origin” anterior to itself.³⁶ It has to stand apart from the incessant demands of society, culture, history, and so on – from the demands even of its “own history.”³⁷ Yet, if law must refuse any such attachment and be utterly responsive, if it thence becomes a vacuity, dependent and derivative and quite lacking in any content of its own, there is inexorable point to the observation of law’s dependence on society, culture, history, and so on. How, indeed, could law’s contents have specific meaning without the contribution of culture as the generator of specific meaning? More intimately, how could there be an “internalizing of the law” on the part of its subjects, or how could it “regulate them from the inside,” without the unsurpassed adroitness of “artistic culture” in its “mapping the complexities of the heart?”³⁸

It must follow, however, that with law’s refusal of any primal attachment, this taking on of meaning has always to be mediated through law itself. No matter how seemingly abject law’s cultural borrowings, law will endow them with its own meanings and create what is readily called a “legal culture.”³⁹ These meanings will often differ markedly from the cultures contributing them.⁴⁰ Also, law will not simply absorb and recreate *a* culture but will, as the terminology has

it, reflect many cultures, and even where, as it often must, law determinately elevates one culture over another, this is not to exclude the other finally, much less to elevate the included pervasively.

This self-determining constitution of law still leaves it a seeming vacuity. If it must determine its own content, law cannot rely ultimately for content on what is outside of it. This is monumentally attested to by the long failure of jurisprudential effort to render law as society or fact. Nor, however, can law generate assured content internally for, as we have just seen, the very process of iterable determination in law affirmatively imports into it a responsive and receptive regard for what is ever beyond. Law's content, then, is evanescent, and it is recognized as such. In all, law would indeed seem to be left a vacuity and, specifically, left without the means of taking on any distinctness in its relation to culture. The outcome would seem to be that my key point and along with it the relational analysis that was the present comment both crumble. Something, obviously, must be done to save them.

What, as it were, produces law's vacuity is its intrinsically incorporative regard for what is ever beyond. This does not, or does not just, involve a denial of determinate content but involves, rather, the responsive opening of that content to the possibility of being otherwise, to becoming an effect of this possibility. Law subsists, then, as the resolving in-between this determinately realized and the ultimately unrealizable possibility beyond.

To lend plausibility to this positioning of law, I will now touch on certain qualities commonly found in law or in legal culture. Starting with equality before the law, in its determinate existence, law is characterized by differentiation and inequality. Hence, perhaps, equality before the law is often described as a value or as an ideal. But it is both less and more than these things. It is less in not being some replete ethical standard, and it is more in not simply being required or desired. It does seem to make sense to say that there *is* equality before the law. This is so, I would suggest, because the determinate in law, with all its differentiations and inequalities, is always opening to, or falling into, the possibility of being otherwise – the possibility of its being without differentiation and inequality. Of course, it can never existentially be that since, with the return to the determinate, differentiation and inequality will always supervene. Yet the possibility of equality remains anterior to law iterably made determinant, and the incipience of equality remains within that law. So positioned, equality before the law is a “manner of being” in law.⁴¹ As such, it has generated a host of operative requirements to do with parity in the processes and outcomes of legal determination.

Using that engagement with equality before the law as a template, other and not unconnected qualities of law and legal culture can now be considered more briefly. Taking impartiality first: law’s lack of containing ties to the existent orients law towards an absence of attachment in its ‘application.’ Yet, what is, in

Locke's terms,⁴² law's being needful of "a known and indifferent Judge" is not finally feasible since the indifference becomes inexorably compromised when judge and judgement are made known in the determinate scene of application. This inevitable diminishing, however, does not counter the integrity of the quality of impartiality. This much can be discerned negatively in that it would not be an answer to a failure of impartiality to say that one was impartial in part.

Then there is the requirement that laws be general. Because of this requirement, it used often to be said that a decision confined to a specific determination does not count as law.⁴³ Yet, if the general cannot find itself in that determinate existence of law which would result from a specific determination, it cannot be so general that it adheres to nothing specific and has no operative content. Hence the common and paradoxical requirement that law's "generality must be specific".⁴⁴ The 'place' where that paradoxical generality is found is in law's normative quality, and this is my final example. The juridical norm will have some specificity of content but its content is ever-extensively general; it cannot be exhausted or foreclosed in specific applications, no matter how numerous. Yet the norm cannot be ungraspable either. It has to carry obligation and, in specific cases, carry the decision. Going over to the side of the angels, it can be said that norms must be capable of maintaining an "internal aspect" so that people may use them "in one situation after another, as guides to the conduct of social life, as the basis for claims, demands, admissions, criticism or punishment,

viz., in all the familiar transactions of life according to rules.”⁴⁵ It is in this infinitely participatory “manner of being” that “legal culture” has been cogently observed.⁴⁶ We could all be gods now.

¹ See Austin Sarat and Thomas Kearns, “The Cultural Lives of Law,” in Sarat and Kearns eds., *Law in the Domains of Culture* (Ann Arbor: The University of Michigan Press, 1998), 1 and 5. For an account of the latter-day significance of culture in this relation, see Austin Sarat and Jonathan Simon, “Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship,” in Sarat and Simon, eds., *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism* (Durham: Duke University Press, 2003), pp.1-16. For an extensive and richly illustrated engagement with the relation between law and culture see Naomi Mezey, “Law as Culture,” *Yale Journal of Law and the Humanities* 13 (2001), 35-67.

² Alfred Kroeber and Clyde Kluckhohn, *Culture: A Critical Review of Concepts and Definitions* (New York: Random House, 1963).

³ Raymond Williams, *Politics and Letters: Interviews with New Left Review* (London: NLB and Verso, 1981), 154.

⁴ Walter Bagehot, *Physics and Politics, Or Thoughts on the Application of the Principles of Natural Selection and Inheritance to Political Society*, (London: Kegan Paul, Trench and Trubner, n.d.), 20-1.

⁵ Gerd Baumann, *Contesting Culture: Discourses of Identity in Multi-Ethnic London* (Cambridge: Cambridge University Press, 1996).

⁶ Op. cit., pp.20-2.

⁷ Op. cit., pp.11, 21, 31.

⁸ Op. cit., pp.12-13 (emphasis on “culture” taken out), and see also p.31.

⁹ Jacques Derrida, *Monolingualism of the Other: or, The Prosthesis of Origin*, trans. Patrick Mensah (Stanford: Stanford University Press, 1998), 24.

¹⁰ Adam Kuper, *Culture: The Anthropologists’ Account* (Cambridge Mass.: Harvard University Press, 1999), 16.

¹¹ Verena Stolcke, “Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe,” *Current Anthropology* 36 (February 1995), 1-24.

¹² Paul Gilroy, *There Ain’t No Black in the Union Jack: The Cultural Politics of Race and Nation* (London: Hutchinson, 1987), 60-1.

¹³ Richard A. Wilson, “Human Rights, Culture and Context: An Introduction,” in Wilson, ed. *Human Rights, Culture and Context: Anthropological Perspectives* (London: Pluto Press, 1997), 9.

¹⁴ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Adversity* (Cambridge: Cambridge University Press, 1995), 10-11.

¹⁵ Cf. Rosemary Coombe, "Contingent Articulations: A Critical Cultural Study of Law," in Sarat and Kearns eds. *Law in the Domains of Culture* (Ann Arbor: The University of Michigan Press, 1998), 62.

¹⁶ Donald Davidson, "On the Very Idea of a Conceptual Scheme," in Rajchman and West eds. *Post-Analytic Philosophy* (New York: Colombia University Press, 1985), 130.

¹⁷ Kuper, *Culture*, p.13.

¹⁸ Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (London: Fontana, 1983), 87.

¹⁹ Op. cit., pp.88-90.

²⁰ Although I am not concerned here with such incidental matters as the truth, it should be mentioned that this ability is not confined to the human animal.

²¹ Jonathan Friedman, *Cultural Identity & Global Process* (London: Sage Publications, 1994); Ulf Hannerz, "Cosmopolitans and Locals in World Culture," Featherstone ed., *Global Culture: Nationalism, Globalization and Modernity* (London: Sage Publications, 1990).

²² Kuper, *Culture*, p.14.

²³ Even where, still continuing with the example, civilization triumphs, an oppositional savagery can always return. It remains "mysteriously attractive:" Edward W. Said, *Culture and Imperialism* (London: Chatto & Windus, 1993), 57.

²⁴ Baumann, *Contesting Culture*, p.13.

²⁵ Op. cit., p.11.

²⁶ See e.g. Sarat and Kearns, “Cultural Lives of Law,” p.2; Coombe, “Contingent Articulations” p.30; Marcel Gauchet, *The Disenchantment of the World: A Political History of Religion* trans Oscar Burge (Princeton University Press: Princeton, 1997), xiv.

²⁷ Cornelia Vismann, “Starting from Scratch: Concepts of Order in No Man’s Land,” in Hüppauf ed. *War, Violence and the Modern Condition* (Berlin: Walter de Gruyter, 1997), 46-7.

²⁸ Dudley Young, *Origins of the Sacred: The Ecstasies of Love and War* (London: Little Brown, 1992), 317.

²⁹ Op. cit., pp.317-18.

³⁰ Michel Foucault, “Maurice Blanchot: The Thought from Outside,” trans. Brian Massumi, in Foucault and Blanchot *Foucault/Blanchot* (New York: Zone Books, 1987), 34.

³¹ Maurice Blanchot, *The Infinite Conversation*, trans. Susan Hanson (Minneapolis: University of Minnesota Press, 1993), 434.

³² Jacques Derrida, “Psyche: Inventions of the Other,” trans. Catherine Porter, in Waters and Godzich, eds. *Reading de Man Reading* (Minneapolis: University of Minnesota Press, 1989), 55.

³³ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* trans. George Schwab (Cambridge, MA.: MIT Press, 1985); Carl Schmitt, *The Concept of the Political* trans. George Schwab (Chicago: University of Chicago Press, 1996), 42; Claude Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism* (Cambridge: Polity Press, 1986), 205 (Lefort's instances, with his capitals, include Humanity, Life, Society, and Nation); Jacques Derrida, "A Discussion with Jacques Derrida," *Theory & Event* 5, (2001). Visited 14th July 2004.

http://muse.jhu.edu/journals/theory_and_event/v005/5.1derrida.html. For a more extensive listing see William E. Connolly, *Neuropolitics: Thinking, Culture, Speed* (Minneapolis: University of Minnesota Press, 2002), 44.

³⁴ Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004), 24.

³⁵ Maurice Blanchot, *The Step Not Beyond*, trans. L. Davis (Albany, SUNY Press, 1992), 194.

³⁶ Jacques Derrida, "Before the Law," trans. Avital Ronell in Derrida *Acts of Literature* (New York: Routledge, 1992), 194.

³⁷ Op. cit., p.190.

³⁸ Terry Eagleton, *The Idea of Culture* (Oxford: Blackwall, 2000), 50.

³⁹ For such usage see David Nelken, “Towards a Sociology of Legal Adaptation” in Nelken and Feest eds. *Adapting Legal Cultures* (Oxford: Hart Publishing, 2001), 24-28.

⁴⁰ David Nelken, “The Truth about Law’s Truth,” *U.C.L. Working Papers* (University College London, Faculty of Laws) 7 (1989).

⁴¹ Jacques Derrida, “Negotiations,” trans. Elizabeth Rottenberg, in Derrida *Negotiations: Interventions and Interviews 1971-2001* (Stanford: Stanford University Press, 2002), 13, for the term.

⁴² John Locke “The Second Treatise of Government,” in Locke *Two Treatises of Government* (New York: New American Library, 1965), p.396.

⁴³ Op. cit., p.409; Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin, 1968), 82.

⁴⁴ Franz Neumann, *The Democratic and the Authoritarian State: Essays in Political and Legal Theory* (Glencoe: The Free Press, 1957), 28.

⁴⁵ H.L.A. Hart, *The Concept of Law* (London: Oxford University Press, 1961), 88.

⁴⁶ Sarat and Kearns, “Cultural Lives of Law,” p.8; Barbara Yngvesson, “Inventing Law in Local Settings: Rethinking Popular Culture,” *Yale Law Journal* 98 (1989), pp.1689-1709, pp.1708-9.